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CONCORD, N.H.

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Nov. 15

Mr. William H. Riley  
Commissioner of Labor  
State House

Dear Mr. Riley:

You have inquired as to whether or not a driver of a taxicab who leases the cab from the owner, paying therefor a specified mileage rate to the owner, but who operates the cab entirely under the supervision and direction of the owner and turns over fares collected to the owner, is an employee within the meaning of the minimum wage law.

Section 25 of the Minimum Wage Law excludes certain classes of employees from the terms of the Act. Taxicab drivers are not excluded. Consequently they would be included if they are employees. There is no direct authority on this point in New Hampshire. The State of Ohio, however, has held that a taxicab driver leasing a cab from the owner at a specified unconditional rental per day, without being required to make any accounting for fares collected from its operation and who operates completely on his own without any supervision or direction from the owner, is not an employee. That case is Coviello v. Commission, 129 Ohio State 589. One is an employee if the employer has the right to direct what work shall be done and when and how it shall be done or has general control over what work shall be done and how. Cumbo v. McGurk, 124 Conn. 433. In brief, the general test is whether or not the employer retains supervision and control over the employee.

It is our opinion that in the instant matter the cab owner is an employer and the cabdrivers are employees within the meaning of the minimum wage law.

Very truly yours,

Henry Dowst, Jr.,  
Assistant Attorney General

HD:RM